

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

PURDUE PHARMA L.P., et al.,

Debtor

Case No.: 19-23649
Chapter 11

**REBUTTAL EXPERT DESIGNATION BY
AD HOC GROUP OF HOSPITALS**

In accordance with paragraph 3.e.i. of the *Second Amended Order Granting Debtor's Motion for Order Establishing Confirmation Schedule and Protocols* [Dkt. No. 2989], the Ad Hoc Group of Hospitals (the "Hospitals") hereby designates the following individuals and topics for rebuttal expert testimony:

1. **Rahul Gupta, MD, MPH, MBA, FACP**

Dr. Gupta is the Senior Vice President and Chief Medical and Health Officer at March of Dimes, the nation's leader in mother and baby health. In this role, Dr. Gupta provides strategic oversight for March of Dimes medical and public health efforts to improve the health of all mothers and babies.

Before joining the March of Dimes, Dr. Gupta served under two Governors as West Virginia's Health Commissioner. As the Chief Health Officer, he led the state's opioid crisis response efforts and launched a number of pioneering public health initiatives such as the Neonatal Abstinence Syndrome Birthscore program to identify high-risk infants. Dr. Gupta is highly regarded for his work concerning opioid patient data, which Dr. Gupta has referred to as a "social autopsy" and local health departments called one of the most important developments the health bureau made during Dr. Gupta's tenure. Highly relevant to the anticipated opinions and subject matter at hand, Dr. Gupta's research helps identify who to look for and how to connect people to resources they need.

Dr. Gupta has been a peer reviewer and editorial board member for scientific journals and for the National Academies of Sciences, Engineering and Medicine, and has published over 125 peer-reviewed articles. Amongst numerous teaching and service awards and honors, he received the 2015 Milton and Ruth Roemer Prize for Creative Local Public Health Work by the American Public Health Association and was named "2017 West Virginians of the Year" by the Charleston Gazette-Mail. In 2018, Dr. Gupta was named Public Official of the Year by the Governing Magazine. He has served as a principal investigator for numerous well-known clinical trials. He is

a past Secretary of the West Virginia Board of Medicine. He was elected to lead his peers as the 2016-2017 President of the West Virginia State Medical Association.

Dr. Gupta, a specialist in internal medicine and preventive medicine, served as an academic faculty member in Tennessee and Alabama before moving to West Virginia originally in 2009 to lead the Kanawha-Charleston Health Department. He is also adjunct professor in the Department of Health Policy, Management and Leadership in the School of Public Health at West Virginia University and visiting faculty at TH Chan Harvard School of Public Health.

As the recipient of several state and national awards, including the 2016 Howell Special Meritorious Service Award to Public Health by the Southern Health Association; the 2015 Milton and Ruth Roemer Prize for Creative local public health work by the American Public Health Association; the 2015 Jay Rockefeller Lifetime Achievement Award on the advancements in public policy in healthcare; and the 2013 Marie Fallon Award for Public Health Leadership by the National Association of Local Boards of Health, Dr. Gupta is a national and global leader in transforming public health practice to advance health equity and create healthier communities. In 2017, the West Virginia Human Rights Commission recognized Dr. Gupta as a Civil Rights Day Award honoree for his outstanding contributions in the areas of civil rights, human rights and the betterment of West Virginia's citizens. Also, in 2017 Dr. Gupta was named West Virginian of the Year for his work towards battling the opioid epidemic by the Pulitzer prize-winning Charleston Gazette-Mail.

Dr. Gupta is expected to provide opinions concerning the appropriateness of the abatement activities identified in the Hospital Trust Distribution Procedures. He is expected to opine that the abatement activities are evidence-based and effective when implemented by treatment providers. Dr. Gupta is further expected to testify that hospitals are well-suited to coordinate and implement abatement activities, but that physicians, including an emergency room physician like Dr. Masiowski, are entirely capable of implementing the abatement activities set forth in the Hospital Trust Distribution Procedures. Dr. Gupta may also opine that in his experience, when a physician is committed to alleviating a community's opioid affliction but uncertain as to the operationalization of an abatement effort, that hospitals, clinics and other physicians experienced in abatement activities are willing to coordinate with other clinicians, including physicians that consider themselves "independent" such as Dr. Masiowski. Dr. Gupta may also opine that patient metrics, including patient claims data, provide a meaningful way of assessing the impact of opioids within a community, allocating resources where the impact is greatest, and implementing strategies for reducing dependency within that community. Dr. Gupta may offer further corollary opinions, including what is required of a physician who seeks to facilitate Medication Assisted Treatment ("MAT") and whether a physician must be certified in MAT before one can initiate a training program for other physicians.

Dr. Gupta is expected to base his anticipated opinions and testimony on his education, training, and experience, including his extensive research and clinical involvement in the opioid crisis. He will also have reviewed Dr. Masiowski's opinions, and the various pleadings filed by Dr. Masiowski, the Hospitals, and the Debtors.

2. Gayle A. Galan, M.D. FACEP

Dr. Galan is the Associate Director of Emergency and Urgent Care Medicine for the Marietta Memorial Hospital System; Core Faculty, Emergency Medicine Residency, for the Marietta Memorial Hospital System; College Physician, Hiram College; and a Consultant for Medical Mutual of Ohio. Dr. Galan has served as Chairman and/or Medical Director for several Emergency Departments in Ohio and, more specifically, in communities devastated by the opioid crisis. Dr. Galan previously served as Chairperson of the Mass Casualty Incident Committee for Disaster Planning in Cuyahoga County, Ohio. She presently serves on the Cuyahoga County Emergency Management Executive Board, the Disaster Planning Committee for the Cleveland Hopkins Airport, the Cleveland EMS Educational Committee, the Case Western Reserve University Emergency Medicine Advisory Committee and the NEOSEM Advisory Committee. In her clinical practice of emergency medicine, Dr. Galan serves a patient population very substantially affected by the opioid crisis.

Dr. Galan is expected to provide opinions concerning emergency room physicians' encounters with opioid disordered patients in the emergency room. She is also expected to opine that such encounters are subject to a standard of care applicable to emergency room physicians, and that the standard of care does not change for an emergency room physician who styles himself as "independent." She is expected to opine that in treating patients, including opioid disordered patients, emergency room physicians generate patient claims data, irrespective of their employment characterization (*i.e.*, "independent" versus employed by a hospital or, most commonly, a physician practice group). Dr. Galan is further expected to opine that, in fact, several of the Hospital Trust requirements and/or abatement uses are presently mandated in some, but not all, communities (*e.g.*, use of Automated Prescription Reporting Systems to track the dispensing of controlled prescription drugs) and intended to monitor for suspected abuse or diversion, and that none of the Hospital Trust requirements are burdensome. She will describe the significance of the patient's electronic medical record in relation to diagnosing and treating opioid use disorder. Dr. Galan is expected to give opinions on the ability of an emergency room physician to fulfill the requirements of the Hospital Trust Distribution Procedures. She is expected to offer opinions as to the appropriateness of the abatement activities provided for by the Hospital Trust, and the feasibility of an emergency room physician, such as Dr. Masiowski, participating in abatement efforts. She may offer testimony as to the instances in which she, or her emergency department colleagues, have engaged in the same activities enumerated in the Hospital Trust Distribution Procedures. Dr. Galen may offer further corollary opinions, including the activities an emergency room physician who is not trained (by either waiver or certification) in MAT can initiate.

Dr. Galen is expected to base her opinions and testimony on her education, training, and experience, including her clinical engagement with patients within the epicenter of the opioid crisis. In forming her opinions, she will also have reviewed Dr. Masiowski's opinions, and the various pleadings filed by Dr. Masiowski, the Hospitals, and the Debtors.

3. Rebecca Busch

Ms. Busch has expertise in clinical, financial, auditing and investigating healthcare issues. With nearly thirty years' experience in auditing clinical practices and healthcare systems of all sizes and

locations, Ms. Busch has developed auditing practices that look beyond the numbers to identify behavioral patterns, data anomalies and other factors which might otherwise go unnoticed in a clinical setting. Ms. Busch's forensic advisory and expert qualifications and services include medical billing; healthcare fraud; data management; data authentication; and analytics. Additionally, Ms. Busch has particularized expertise in medical bill audits; usual customary reasonable (UCR) analysis; life care plans; medical procedure quotes; and fraud, waste and abuse.

Ms. Busch may provide opinions concerning the patient claims data, and its patterns, that are generated in the communities and local coverage area served by Dr. Masiowski, namely, Mount Pleasant, South Carolina and the surrounding area. Ms. Busch is expected to opine as to the various billing models utilized by emergency departments and, separately, those used by emergency room physicians. She is expected to opine as to the patient data that are publicly available, already routinely supplied by physicians as a requirement of their participation in reimbursement from Center for Medicare & Medicaid Services (CMS). She may provide opinions about Dr. Masiowski's publicly available claims data, and corollary opinions concerning the patient demographic served by Dr. Masiowski. Ms. Busch is expected to offer opinions concerning Revenue Cycle Management (RCM), namely, the process of handling claims, processing payment and generating revenue within the healthcare industry. She is expected to opine that the universal process begins when the patient is first encountered, and continues through validation (or not) of insurance eligibility, receipt of services, documentation and coding of services, and generation of receivables until the balance on the account is closed. She is expected to opine as to various billing practices of emergency room physicians, including physicians, consistent with how Dr. Masiowski has described himself and his emergency room practice. She is expected to opine that federal mandates along with contractual obligations with third party payers, including CMS, require Dr. Masiowski to utilize universal coding schematics for treatment of patients in the emergency department, that the coding generates claims data, that Dr. Masiowski has access to his claims data, and that a failure of a physician to implement billing and coding according to industry standard would be potentially catastrophic for a physician (particularly an independent physician), but could also serve as a basis for financial losses such as those described in affidavits filed by Dr. Masiowski and his attorney in the Purdue Pharma bankruptcy case. Ms. Busch is expected to opine that nothing about the Trust Distribution Procedures prohibits Dr. Masiowski from submitting claims data, and that claims data (if correctly implemented in the clinical setting) is frequently used as a reliable metric to quantify a problem in a practice setting.

Ms. Busch is expected to base her opinions and testimony on her education, training, and experience, including her auditing of physicians, physician groups and healthcare systems. In forming her opinions, she will also have reviewed Dr. Masiowski's opinions, and the various pleadings filed by Dr. Masiowski, the Hospitals, and the Debtors.

4. William Legier

Mr. Legier has practiced in the field of Certified Public Accounting for almost 50 years. He also holds the designations of Certified in Financial Forensics and Certified Fraud Examiner. His expertise is in accounting, finance, tax, business and business information technology, management control systems, business valuation, fraud and forensic accounting. Mr. Legier has been recognized by various state and federal district courts as an expert in calculating catastrophic losses and ascertaining operational impact attributable to events or issues.

Mr. Legier is expected to opine that the Hospital Trust Distribution Procedures handle all claims data in the same manner. Although certain aspects of data may differ (such as volume and treatment codes, for example), there is no difference in the treatment of claims data submitted by a treatment provider as suggested by Dr. Masiowski. Mr. Legier's opinion is expected to be consistent with the demonstration of the eponymous model offered and provided recently to Dr. Masiowski, his counsel, the Debtor's counsel and counsel to the Unsecured Creditors Committee. Further, Mr. Legier is expected to opine that, consistent with the emergency room physician claims data used in that demonstration, if Dr. Masiowski would oblige the request to submit merely one revenue cycle of his data, further demonstration with Dr. Masiowski's claims data would similarly show uniform treatment of the claims data.

Mr. Legier is expected to base his opinions on his education, training and professional experience, including his handling and analysis of claims data for more than 1,100 hospitals and physicians over the past several years.

The Hospitals reserve all rights to supplement these disclosures and to choose not to call any of these four individuals, or any other expert or fact witness, in support of the Debtor's Second Amended Plan and in opposition to objections to that Plan, particularly those pertaining to Class 6.

Dated: July 6, 2021

Respectfully submitted,

TAFT STETTINIUS & HOLLISTER LLP

By: /s/ Michael P. O'Neil
Michael P. O'Neil
Admitted *Pro Hac Vice*
Counsel for Ad Hoc Group of Hospitals

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2021 I caused a copy of the foregoing *Rebuttal Expert Designation by Ad Hoc Group of Hospitals* to be electronically filed and served via the United States Bankruptcy Court for the Southern District of New York's CM/ECF system upon the following parties in this case:

(See attached list)

/s/ Michael P. O'Neil
Michael P. O'Neil

Mailing Information for Case 19-23649-rdd – July 6, 2021

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